# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1958

**No. 66**

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,
*Petitioners,*

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON,
*Respondents.*

## PETITIONERS' OPENING BRIEF.

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## PETITIONERS' OPENING BRIEF.

### OPINIONS BELOW.

The opinion of the Fourth District Court of Appeal of the State of California is unreported but found in 127 A.C.A. 2d 320. The opinion of the Supreme Court of the State of California, rendered on December 2, 1955, is reported in 45 Cal. 2d 657. The opinion of the United States Supreme Court is reported in 353 U.S. 26. The second opinion of the

Supreme Court of the State of California, rendered on January 16, 1958, is reported in 49 Cal. 2d 595.

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## JURISDICTION.

The second judgment of the Supreme Court of the State of California was entered on January 16, 1958. A timely petition for rehearing was filed and denied on February 13, 1958. A petition for writ of certiorari was filed on May 3, 1958 and was granted on June 23, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

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## STATUTE INVOLVED.

The statutory provisions involved are: The Labor-Management Relations Act, 1947, 29 U.S.C. 141 *et seq.* (Taft-Hartley Act).

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## QUESTIONS PRESENTED.

The conclusions of the Supreme Court of the State of California in its second opinion in this case, raise the following questions:

1. May a state court award damages where the National Labor Relations Board has exclusive jurisdiction but has declined to act?

2. If the answer to question number 1 is in the affirmative, may a state court assert jurisdiction to award damages where it may not award injunctive relief?

3. If the answers to questions 1 and 2 are in the affirmative, may a state court assert jurisdiction to award damages where such are incidental to and ancillary to the injunctive relief sought?

4. If the answers to questions 1, 2 and 3 are in the affirmative, may a state court assert jurisdiction to award damages based upon state statutes relating solely to labor-management relations?

5. If the answers to questions 1, 2, 3 and 4 are in the affirmative, may a state court assert jurisdiction to award damages where the only conduct involved is peaceful?

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## STATEMENT OF THE CASE.

Plaintiffs are engaged in the business of selling lumber and building materials as partners under the name of Valley Lumber Company. Defendants are the San Diego Building Trades Council, Millmen's Union, Local No. 2020, Building Material and Dump Drivers, Local No. 36. On or about November 15, 1952, the Unions requested a labor agreement with plaintiffs under one of the terms of which certain employees were required to make application for membership in the Union within thirty (30) days after hiring. The company refused to sign the agreement on the ground that it would be a violation of the National Labor Relations Act to do so before its employees or an appropriate unit thereof had designated the Union as their collective bargaining agent. There-

after, the Unions commenced peaceful picketing at the company's place of business. The pickets carried a banner of moderate size upon which appeared the following words: "AFL—Picket—Millmen's Union No. 2020, Teamsters' Union No. 36 Invite Employees to Join."

Plaintiffs brought an action on May 7, 1953 in the Superior Court of the State of California in and for the County of San Diego, a court of general jurisdiction, seeking an injunction against defendants to restrain picketing of plaintiffs' place of business, alleging that plaintiffs were engaged in a business affecting interstate commerce and that the activity of defendants was violative of the Labor-Management Relations Act. Damages were sought only as ancillary relief to the equitable action.

On the same day, May 7, 1953, plaintiffs also requested the Regional Director of the National Labor Relations Board to determine the appropriate unit and to hold a representation election, which the Regional Director refused to do. No appeal was taken from the determination of the Regional Director and plaintiffs filed no unfair labor practice charge against the defendants.

During the entire proceedings in the state court, defendants have consistently challenged the jurisdiction of the trial court on the ground that state courts lack jurisdiction in this matter and that if the alleged acts were illegal, at all, the National Labor Relations Board had exclusive jurisdiction.

The trial court found that the company was engaged in a business affecting interstate commerce within the meaning of the National Labor Relations Act and that the purpose of the picketing was to enforce demands for the execution of a union shop agreement. The trial court further found that the picketing was *peaceful,* but that the *alleged conduct was violative of the Labor-Management Relations Act.* The trial court then proceeded to apply a two-fold remedy for an alleged violation of the Federal Labor Law, which consisted of injunctive relief and damages. It is significant that the trial court did not find any violation of state law and did not base the above remedies on any state law.

Defendants appealed from the decision of the trial court on the ground that it lacked jurisdiction to grant such relief for alleged unfair labor practices under the Act and for the reason that the conduct of the Union was entirely lawful under the laws of the State of California. In addition, defendants based their appeal on the contention that plaintiffs had failed to exhaust their administrative remedies before the National Labor Relations Board.

The District Court of Appeal, Fourth Appellate District, State of California, in an unanimous opinion rendered on August 25, 1954 (127 A.C.A. 2d 320) reversed the trial court and held that the conduct involved was lawful and protected under the laws of the State of California and that the state court had no jurisdiction in a case where there is an allegation

of an unfair labor practice under the Labor-Management Relations Act. In reaching this latter conclusion, the District Court relied primarily upon *Garner v. Teamsters, Chauffeurs & Helpers Local No. 776*, 346 U.S. 485, which had been decided after the judgment of the trial court in this matter.

In applying the *Garner* case, the California District Court concluded that state courts were precluded from giving a *different* and *additional* remedy for the correction of an *identical* grievance over which the National Labor Relations Board has exclusive jurisdiction.

Insofar as the present matter is concerned, it is even more significant that the District Court of Appeal construed the case of *United Construction Workers v. Laburnum*, 347 U.S. 656, in determining whether or not the award of damages was proper. The Court, as to that question, stated:

> "However, in this state peaceful picketing is a lawful form of concerted action by members of a labor union." (p. 321.)

and determined that the *Laburnum* case, *supra*, was not applicable, and that state courts could not grant damages in a situation which was otherwise preempted by the National Labor-Management Relations Act.

Plaintiffs appealed from the decision of the District Court of Appeal; December 2, 1955 the Supreme Court rendered a 4-3 decision holding that where the Board has jurisdiction but has declined to act because of its jurisdictional yardsticks, such action amounts to

a declaration that national labor policy will not be jeopardized if the state court assumes jurisdiction. The majority concluded that if the law were otherwise, Congress would be denying a remedy to employers over whom the Board declines to exercise jurisdiction. This reasoning of the majority is identical to the reasoning found in the January 16, 1958 opinion of the majority of the same court.

A strong dissent in the first opinion held that the foregoing reasoning was fallacious because:

(1) The National Labor Relations Board and the powers granted to it are an integral part of the federal law and that law is not intended to have application in a situation where the Board plays no part; it is inescapable that the federal laws are to be administered by the Board, not by the state courts.

(2) The Board, in refusing jurisdiction as it has power to do, has in effect determined that the federal law should not apply in this case.

(3) It is neither feasible nor fair to apply the *federal* law.

(4) There has not been such a refusal to exercise jurisdiction by the Board here as to justify a conclusion that the state court has jurisdiction.

Subsequently, the California Supreme Court denied a timely petition for rehearing filed by defendants who thereupon petitioned this Court for the issuance of a writ of certiorari, which petition was granted.

This Court subsequently rendered an opinion reversing the decision of the California Supreme Court,

noting that state courts lacked jurisdiction to grant injunctive relief in this matter and remanded the case back to the California Court for further proceedings to determine the basis upon which the award of damages had been sustained. In so doing, reliance was placed upon this Court's decision in a companion case, *Guss v. Utah Labor Relations Board,* 353 U.S. 1, wherein this Court stated, at page 9:

> "We hold that the proviso to Section 10(a) is the exclusive means whereby states may be enabled to act concerning the matters which Congress has entrusted to the National Labor Relations Board. We find support for our holding in prior cases of this Court."

As to the particular question of damages, this Court stated in the *Garmon* decision, at page 29:

> "Respondents, however, argue that the award of damages must be sustained (under United Construction Workers, etc. v. Laburnum Construction Corp., 347 U.S. 656, 74 S.Ct. 833, 98 L.Ed. 1025). We do not reach this question. The California Supreme Court leaves us in doubt, but its opinion indicates that it felt bound to 'apply' or in some sense follow federal law in this case. There is, of course, no such compulsion. Laburnum sustained an award of damages under state tort law for violent conduct. We cannot know that the California court would have interpreted its own state law to allow an award of damages in this different situation."

The California Supreme Court rendered a second decision after this Court's remand to it, in which it

reluctantly conceded that state courts have no jurisdiction in this case insofar as injunctive relief is concerned but concluded that jurisdiction to award damages was retained where the National Labor Relations Board has declined to act, even though the picketing involved was peaceful. The majority did not base the award of damages upon traditional tort laws but rather upon statutes dealing solely with labor-management relations which were reconstrued in order to permit such an award. Thus, the basis for sustaining the award of damages in the second opinion rendered by the California Supreme Court was different and contrary to the basis for its sustaining that same award of damages in its first decision in this case.

In making its decision, the California court stated:

> "The fact that the particular tort in the Laburnum case was said to be a common law tort, or one involving physical violence, is, of itself, not controlling. To confine the Laburnum case to its own fact would be to completely ignore the rationale of the decision. It would require also that we ignore the language by which the present case was remanded for reconsideration." (49 Cal. 2d 595, 604.)

Chief Justice Gibson and Justices Traynor and Carter, all of whom dissented from the first opinion, concurred in the strong dissent from the second, stating:

> "The possibility of conflict of policies, pointed up in the Garner case, remains the principal consideration, whether damages or injunctive relief,

violence or peaceful picketing, common law or statutory rights to recovery are involved. Thus, if there is a conflict between state and federal substantive rules in terms of conduct condemned or protected, state law must of course give way no matter what remedy it provides. Likewise, even if state and federal laws have an appearance of harmony, as applied by different tribunals they may become inconsistent and federal policy indirectly thwarted. This potential inconsistency was the consideration that lay behind the Garner decision and prompted the statement that 'a multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudication as are different rules of substantive law'." (49 Cal. 2d 595, 618.)

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## I.

### FEDERAL PREEMPTION UNDER THE LABOR-MANAGEMENT RELATIONS ACT DOES NOT DEPEND UPON THE FORM OF THE REMEDY.

#### A. The Act does not limit the exclusive jurisdiction of the Board to the issuance of equitable relief.

The issue of federal preemption under the Labor-Management Relations Act was thoroughly explored and discussed in the decisions of this Court in *Guss v. Utah Labor Relations Board*, 353 U.S. 1; *Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U.S. 20 and *San Diego Building Trades Council v. Garmon*, 353 U.S. 26. In those cases it was noted that in the absence of a cession agreement under Section 10(a)

of the Act, the state administrative and judicial tribunals were without jurisdiction.

The majority of the California Supreme Court, however, in its second decision in this case sustained the original award of damages by the state court, even though the basis for its decision was directly contrary to its first decision. In so doing, the California court characterized the problem in the following terms:

> "It is apparent from the announcements of the Supreme Court as to the limitations on the jurisdiction of a state court to grant equitable relief in the solution of labor disputes that such courts are not foreclosed from asserting jurisdiction in an action for damages resulting from tortious conduct of those engaged in the dispute." (*Garmon v. San Diego Building Trades Council*, 49 Cal. 2d 595, 602.)

Thus, the effect of its holding leaves state courts free to assert jurisdiction in at least the following three situations: (1) where the Board has jurisdiction as to all aspects of a controversy but declines to act; (2) where the Board asserts jurisdiction and grants relief under the Act; and (3) where the Board asserts jurisdiction and dismisses the action because it determines that the facts do not disclose a violation of the Act.

It is submitted that the distinction drawn by the majority is totally lacking in either judicial or statutory support and the threefold effect of its distinction is directly contrary to the decisions of this Court, cited above. This lack of support is demonstrated by the

terms of Section 10(a) of the Act which forms the cornerstone of Board jurisdiction; that section provides:

> "Sec. 10.(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Obviously, there is no language in that section which would support an inference that exclusive Board jurisdiction is limited to the granting of equitable relief leaving state courts free to award damages and other remedies. Indeed, the phrase "This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise" indicates Congressional concern and knowledge of the various types and forms of relief which could be applied in the field of labor-

management relations and demonstrates the intent to preserve the preemptive character of the Act and the exclusive jurisdiction of the Board from inroads which would result from the application of various devices which might take the form of differing forms or types of remedy.

The assertion that this section is to be limited in its application to specific methods of regulation or types of relief and no other is to negate the complete scheme of regulation developed by the Act and would be a return to the rigid and formalistic patterns of Roman law which would make jurisdiction of the particular tribunal dependent upon the accident of pleading and prayer, rather than the substance of the dispute. That this was not the intent of Congress is demonstrated by Section 1 of the Act which provides, in part:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions to the free flow of commerce when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

It was the intent of Congress that Section 1 be read together with the other provisions of the Act, includ-

ing Section 10(a) so that the broad framework of regulation could be exercised, with the greatest uniformity and effect. House Report No. 245 on H.R. 3020, states:

> "Consistently with *later clauses,* section 1 of the act, as proposed to be amended, states its purpose to promote the flow of commerce by protecting the rights not only of employees, but also of those of employers and those of labor organizations, and to prevent any of these parties from acting unfairly toward the others. It protects employees against abuses by their unions, as well as against abuses by employers. It protects unions against abuses by employers, by employees, and by other unions. It protects employers against abuses by unions and their members." (1 Legislative History of the Labor Management Relations Act, 1947, page 302; emphasis added.)

This, it becomes clear that the intent of the Act is to control all aspects of *labor-management* relations which affect interstate commerce, without regard to the form of the remedy. Contrary to the contention of the California Court, the distinction to be drawn is not based upon such form of remedy but is based upon the substance of the dispute and lies between disputes affecting labor and management, as such, on the one hand, and situations where the substance of the matter is purely *incidental* to such a dispute, as where there is a breach of the peace or where the matters concern contractual relations between a labor organization and its members.

In this case we are dealing with facts disclosing a purely *labor-management* controversy without any ele-

ment of incidental rights or obligations such as those mentioned above and such as were present in *United Construction Workers v. Laburnum*, 347 U.S. 656, *U.A.W. v. Russell*, 356 U.S. 634, and *International Association of Machinists v. Gonzales*, 356 U.S. 617.

**B. Judicial construction of the Act has clearly established that the doctrine of preemption cannot be circumvented or limited merely by the application of a different form of relief.**

In its first decision in this case, the California Supreme Court conceded that if the Board had acted, its jurisdiction would have been exclusive as to all aspects of the controversy. In this regard it was stated:

> "The National Labor Relations Board has exclusive primary jurisdiction to prevent unlawful demands (*Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 [75 S.Ct. 480, 99 L.Ed. 546]; *Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776*, 346 U.S. 485 [74 S.Ct. 161, 98 L.Ed. 228]; *United Const. Workers v. Laburnum Const. Corp.*, 347 U.S. 656 [74 S.Ct. 833, 98 L.Ed. 1025]; *Bethlehem Steel v. New York State Labor Relations Board*, 330 U.S. 767, 769 [67 S.Ct. 1026, 91 L.Ed. 1234].) The purpose of this picketing was to compel the company to sign an agreement which included a clause requiring the employer to encourage membership in the unions. In the circumstances here shown, under the Labor Management Relations Act, this was an unfair labor practice." (*Garmon v. San Diego Building Trades Council*, 45 Cal. 2d 657, 661.)

Obviously, the basis for the California Court's decision was that an unfair labor practice under the Act

was committed. No violation of state law was found to exist and, in fact, in a companion case to its first decision in this matter, decided the same day, it was found that the type of conduct involved here was lawful. In *Benton v. Painters Union*, 45 Cal. 2d 677, it was stated at page 681:

> ". . . an employer may not obtain relief from economic pressure asserted in an effort to compel him to sign a union shop agreement."

Now, not only does the California Court reverse itself without even mentioning the *Benton* case, but it seeks to regulate purely labor-management relations by changing the form of the remedy in order to circumvent and avoid the doctrine of preemption enunciated by the Court in the *Guss* case and applied to this very controversy by this Court in the *Garmon* case. Clearly, the substance of the dispute in this matter has not changed—obviously, the California Court is seeking to regulate conduct between employers and labor organizations and is not seeking to prevent any breach of the peace or to compensate individuals for damages suffered *coincidentally* as was done in *Laburnum*—nor to regulate contractual rights between labor organizations and their members, as was done in *Gonzales*.

In previous decisions of this Court, where the question of federal-state relations was discussed with respect to labor-management relations, there is a singular lack of support for the contention that the form of the remedy governs the scope of the Board's jurisdiction.

In *Garner v. Teamsters, Chauffeurs & Helpers Local No. 776*, 346 U.S. 485, it was pointed out:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide *primary interpretation and application* of its rules to a specific and *specially constituted tribunal* and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." (at page 490; emphasis added.)

The *Garner* case, then, presented a clear cut condemnation of distinctions which are based upon form or procedure without regard to substance. Certainly, the discussion of all aspects of regulation and relief in that case would be sufficient to put to rest any contention that state tribunals were free to assert jurisdiction as to legal remedies where they could not do so as to equitable relief; but if additional support is required, it can be found in the consistent pattern of decisions of this Court in *Weber v. Anheuser-Busch*, 340 U.S. 468, wherein it was pointed out that Board jurisdiction is inherently exclusive, and in *Building*

*Trades Council v. Kinard Construction Co.*, 346 U.S. 933, where it was stated:

> "Since there has been no clear showing that respondent has applied to the National Labor Relations Board for appropriate relief, or that it would be futile to do so, the Court does not pass upon the question suggested by the opinion below of whether the State court could grant its own *relief* should the Board decline to exercise its jurisdiction." (Emphasis added.)

Again in *International Union v. W.E.R.B.*, 336 U.S. 245, the exclusiveness of Board jurisdiction was indicated when it was noted:

> "No longer can any state, as to relations within reach of the Act, treat otherwise lawful activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert." (336 U.S. 245, 258.)

Finally, this Court announced a principle in *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62, to which the decision of the majority of the California Court is diametrically opposed. In that case, the state court had granted an injunction to restrain peaceful picketing and it was stated:

> "The industrial relations between the company and its employees nonetheless affect interstate commerce and come within the field occupied by the National Labor Relations Act, as amended. The Labor Board is but an agency through which Congress has authorized certain industrial relations to be supervised and enforced. The Act goes further. The instant employer, employees and union are controlled by its applicable provi-

sions and all courts, state as well as federal, are bound by them." (at page 74.)

In each of the decisions cited above and in each of the excerpts referred to, this Court was concerned with and dealing with the application of the widest variety of laws applicable to labor-management relations, ranging from the exercise of jurisdiction of the state courts to grant injunctions to the assumption of jurisdiction by state labor relations boards empowered to apply many differing and wide-reaching regulatory procedures in the nature of legal and equitable relief. In each instance, the language of this Court indicated the exclusive nature and the preemptive character of the Act with respect to *all* types of procedure and *all* forms of relief where the *subject matter* sought to be regulated by the state tribunal fell within its regulatory scope, and it is submitted that the basic and consistent rationale of this Court enunciated in those cases, as well as the express provisions of the Act would be violated if a different rule were followed where the relief sought or granted appears in the form of damages.

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## II.

### STATE COURTS LACK JURISDICTION TO AWARD DAMAGES TO REGULATE RELATIONS BETWEEN LABOR AND MANAGEMENT WHERE THEY MAY NOT AWARD EQUITABLE RELIEF BECAUSE OF THE APPLICATION OF THE ACT.

The *Laburnum* case, supra, is the leading decision dealing with the question of the jurisdiction of state courts to award damages in situations where the labor

dispute affects interstate commerce. In that case, the union, through the use of intimidation and threats of violence, demanded recognition to which it was not entitled, which conduct formed the basis of an award of damages by the state court. In sustaining the award of damages, however, this Court pronounced three basic standards which have been considered as guides in cases involving damages in such situations. These standards are completely absent in this case, as will be indicated below, thus compelling the conclusion that though the assumption of jurisdiction by a state court in the *Laburnum* case was proper, it is totally unwarranted here.

**A. State tribunals may not award damages which are not based upon traditional common-law tort actions.**

The first element discussed by this Court in *Laburnum* was the distinction between traditional common-law tort actions, on the one hand, and an action based upon statutes which have particular application to and regulate labor-management relations, on the other. That is, the distinction between applying common-law tort concepts to redress persons for wrongs and breaches of duty which are incidental to the problem of industrial relations and the application of remedies under laws which specifically regulate conduct which is not incidental to but which involves direct relations between the employees and their employers.

This Court noted that in *Garner*, it was held:

> "... Congress has neither provided nor suggested any substitute for the *traditional* state court procedure for collecting damages for injuries caused

by tortious conduct." (347 U.S. 656, 663; emphasis added.)

It was then concluded that the *Garner* case would not be construed as excluding state courts from awarding damages in common-law tort actions under certain circumstances.

However, the fact situation in the instant case represents neither a common-law action for damages nor the filing of a complaint requesting the application of traditional procedures. Here, the action was not brought to obtain redress for tortious conduct suffered by individuals but, as conceded by the California Supreme Court in its earlier decision, the theory of the complaint was that the defendants had committed a violation of the National Labor Relations Act. On redecision, the theory for sustaining the award of damages was in no way concerned with common-law tort claims but instead was expressly confined to the application of state statutes applicable solely to labor-management relations; statutes which were applied in a manner contrary to the law of collective bargaining and labor-management relations in California as they had existed for more than fifty years. In the final analysis, the conclusion reached by the California Court is not only directly contrary to the holdings of this Court, but is contrary to the traditional state laws and procedures applicable to the conduct involved here.

**B. State Courts may not grant damages where conduct is peaceful.**

The facts of the *Laburnum* case involved physically violent conduct, an element which is completely lacking in this matter. Here, all parties are agreed and all courts have conceded that the only conduct involved was peaceful picketing, conduct which was declared by this court to be "different" from that found in *Laburnum*. *San Diego Building Trades Council v. Garmon*, supra, at page 28. In the *Russell* case, supra, it was again pointed out that the state court could award damages where the element of violence was present. In that case it was noted:

> "At the outset, we note that the union's activity in this case clearly was not protected by federal policy. Indeed the strike was conducted in such a manner that it could have been enjoined by Alabama courts." (356 U.S. 634, 640; emphasis added.)

Thus, while indicating that the element of violence is an essential element in the application of the doctrine of the *Laburnum* case, this Court in footnote 6, appearing at page 644 of the *Russell* case, characterized the conduct involved in the instant matter as "peaceful picketing".

Clearly, in such a peaceful situation, where it has already been held that the state court has no jurisdiction to award injunctive relief which could have been granted in *Russell*, it cannot be stated that the doctrine of preemption is inapplicable. The compelling reason against such an argument is that both *Laburnum* and *Russell* represent exceptions to the preemp-

tive application of the Act because the conduct regulated is only incidental to labor-management relations —conduct which state courts can restrain through the injunctive procedure just as if it were completely independent of labor dispute.

**C. State Courts may not assert jurisdiction where such action creates an actual or potential conflict with the application of the Act.**

The third and most significant element considered by the *Laburnum* case was the question of whether or not the exercise of jurisdiction by a state court in a particular instance would conflict with federal laws governing labor-management relations; it was concluded that if the exercise of jurisdiction by state courts resulted in an immediate or potential conflict with federal laws, then state courts could not act. In reaching this conclusion the *Garner* case was again relied upon with particular reference to the statement quoted at page 17, supra.

The point need not be labored and it is respectfully submitted that the effect of the California decision, which permits state courts to regulate relations between labor and management where the Board has jurisdiction but declines to act, where the Board acts and applies a remedy under the Act or where the Board dismisses the charge because of an insufficiency of facts to demonstrate a violation of the Act, can have no result other than a complete inconsistency and lack of uniformity and, indeed, an impeding and circumventing of the processes of the Act itself. The potential danger of conflict with the application of

the Act would exist in virtually every dispute between labor and management—a situation which was not intended by Congress and which has been carefully avoided by this Court in its decisions construing the Act. It becomes obvious that the language of the *Garner* case quoted above is particularly applicable here for it could not have been the thought of both Congress and this Court that state tribunals could provide a duplicate remedy and award damages where they could not award injunctive relief; particularly where the former would reach the same results in regulating labor-management relations as would the application of the latter form of remedy.

This contention is strengthened by this Court's statement, above quoted, that there is as much danger of conflicting application of laws that depend upon "differing attitudes" as there is a danger of the application of expressly conflicting laws. It cannot be doubted that the majority decision in this case was motivated by just such "attitudes."

Finally, it is apparent that a judicial or administrative tribunal must make the same determinations and interpretations as to the substance of the controversy regardless of the form of the remedy. This is particularly true where the damages, as in this case, are sought merely as an incidental remedy to such injunctive relief. Thus, under the current position of the California Supreme Court, the exclusive jurisdiction of the Board would be jeopardized by the possibility of inconsistent interpretations on the part of state courts which would be permitted to exercise

jurisdiction and award damages in the same controversy regardless of the action taken by the Board or the remedy prescribed by it. This potential breeding ground for inconsistent application of labor laws is recognized by the dissenters below who state:

> "It is readily apparent that the present case provides no such assurance that there will not be conflict between state and federal laws as applied. Defendants engaged in peaceful picketing, not threats and violence; their conduct was not of a type that gives any assurance how the National Labor Relations Board would view it under section 8(b), or that the board might not find it a protected activity under section 7." (49 Cal. 2d 595, 619.)

The dissenting opinion then concludes:

> "Because of the danger of conflict in the application of state law with the National Labor Relations Board's application of the federal statute, the trial court was without jurisdiction to issue an injunction. I am of the opinion that for the same reason it was without jurisdiction to award damages." (bal. at page 620.)

## III.

### STATE COURTS MAY NOT ASSUME JURISDICTION MERELY UPON THE GROUND THAT THE CONDUCT INVOLVED WOULD OTHERWISE BE UNREGULATED.

The theory of the majority of the California Court in its first opinion was that if state tribunals were not permitted to act, then the injured party would be left without a legal remedy. This argument was rejected by this Court which held that an argument of this type was better directed to the legislature and not to the Courts. Nevertheless, the majority in its second sustaining of the award of damages again emphasizes and repeats this very argument when it states:

> "In view of the decisions of the Supreme Court holding that state agencies and courts lack the jurisdiction to grant injunctive relief under any circumstances in interstate commerce cases, there would seem to be nothing left to the states if their courts are also prohibited from making an award for damages in a proper case." (49 Cal. (2d), 595, 602.)

The majority here again assumes that federal administrative and judicial tribunals are without power to award damages in the "proper case". Such an assumption completely negates the provisions of Sections 301 and 303 of the Act which permit the federal courts to grant damages. (*Lewis Food Co. v. Los Angeles Meat, etc. Drivers,* (S.D. Cal., 1958) ..... F. Supp. .....). Such an assumption also negates the provisions of the Act which permit the Board to compensate an individual worker for loss of pay, to return dues and other moneys improperly deducted from his

pay, and other instances which are too numerous to mention.

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## IV.

### STATE COURTS MAY NOT ASSERT JURISDICTION TO AWARD DAMAGES EXCEPT WHERE THE CONDUCT INVOLVED DOES NOT FALL WITHIN THE REGULATORY SCOPE OF THE ACT.

The second decision of the California Supreme Court relied heavily on the case of *Benz v. Campagnia Naviera Hidalgo*, 353 U.S. 138, but the crucial element of that case was ignored for there it was held that the Act was totally inapplicable since the controversy involved a labor dispute with *foreign nationals*—a matter not regulated by the Act. The question of pre-emption under the Act was, therefore, in no way involved.

Similarly, the California Court relied upon *International Brotherhood of Teamsters v. Vogt, Inc.*, 354 U.S. 284 and *Stacey v. Pappas*, 350 U.S. 870. However, neither case is applicable here for, as admitted by the majority, those cases did not involve situations where the employer's business and/or the dispute affected interstate commerce within the meaning of the Act. (*Garmon v. San Diego Building Trades Council*, 49 Cal. 2d 595, 609-611.)

Finally it has been urged that the decision of this Court in the *Gonzales* case, supra, is applicable here. On the contrary it must be noted that case dealt solely with the contractual relations between labor organizations and their members.

## V.

### THE CALIFORNIA SUPREME COURT IN THIS CASE VIOLATED THE MANDATE OF THIS COURT.

As discussed above, the majority opinion violates and misapplies the mandate of this Court in reversing and remanding the instant case for further proceedings not inconsistent with its decision. As stated by your petitioners in their petition for rehearing and in their petition for certiorari in this matter, the majority not only misapplied the *Laburnum* case but misinterpreted the language of the remand to mean that since the initial award of damages was not reversed, this Court would permit damages under that case in this "different situation". Clearly, such reasoning is erroneous for if such were the case, this Court would merely have affirmed the original award and would not have remanded the case back for further proceedings. Obviously, the initial award of damages was neither reversed nor affirmed because the basis upon which the California Court acted was unclear.

The mandate of this Court is further violated by the fact that the existing state law as enunciated in the *Benton* case, supra, and other California cases was not applied. This Court stated:

> "We cannot know that the California court would have interpreted its own state law to allow an award of damages in this different situation." (353 U.S. 27, 29.)

As stated previously, the status of the law as enunciated in the *Benton* case, supra, was not even dis-

cussed, let alone applied, even though that case was decided the same day as the California Court rendered its first opinion in this case. In refusing to apply state law as it existed when this case was tried and decided the first time and in substituting a new and different concept, it is clear that the majority of the California Court has attempted to overcome and circumvent the principle of federal preemption now well established in this field.

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## CONCLUSION.

For the foregoing reasons, the judgment of the court below should be reversed.

Dated, San Francisco, California,
September 18, 1958.

Respectfully submitted,
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